

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 176,512

On March 16, 1995, the above matter came before the Appeals Board upon the appeal by the Kansas Workers Compensation Fund of the Award of Special Administrative Law Judge William F. Morrissey dated December 7, 1994.

Claimant appeared by and through her attorney, David M. Bryan of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Frederick L. Haag of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Steven L. Foulston of Wichita, Kansas. There were no other appearances.

The record and stipulations as specifically set forth in the Award of the Special Administrative Law Judge are herein adopted by the Appeals Board.

What, if any, is the liability of the Kansas Workers Compensation Fund?

Additional issues raised before the Special Administrative Law Judge but not appealed to the Workers Compensation Appeals Board are herein affirmed insofar as they are not in contradiction to the opinions cited herein.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Special Administrative Law Judge sets out both findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Special Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The Kansas Workers Compensation Fund argues the award of the entire liability in this matter against the Fund as inappropriate, citing the second deposition of Dr. Ernest L. Schlachter in support of its position. The Appeals Board finds the second deposition testimony of Dr. Schlachter to be contradicted not only by Dr. Schlachter's first deposition testimony but also by the deposition of Dr. Kenneth D. Zimmerman and the reports of Dr. Paul D. Lesko. It is apparent from the record that claimant suffered preexisting left upper extremity symptomatology which caused her to incur additional problems in the left upper extremity. Her overcompensation for the left hand then caused additional problems to claimant's right upper extremity. In addition, claimant had a history of pancreatitis and preexisting diabetes both of which could lead to peripheral neuropathy and possible carpal tunnel syndrome problems in her upper extremities. It was also noted claimant had undergone a prior hysterectomy and salpingo-oophorectomies which also creates the possibility of carpal tunnel syndrome resulting from atrophy of the subcutaneous tissues.

When claimant was hired by respondent she was placed under permanent restrictions as a result of her preexisting problems. Both Dr. Schlachter's first deposition testimony and Dr. Zimmerman's opinion that claimant would not have suffered either the additional left upper extremity or right upper extremity symptomatology "but for" her preexisting condition are supported by claimant's work history and medical history, including the examinations, diagnoses and opinions of the treating physicians.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated December 7, 1994, assessing 100% of the liability against the Kansas Workers Compensation Fund, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David M. Bryan, Wichita, KS  
Frederick L. Haag, Wichita, KS  
Steven L. Foulston, Wichita, KS  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director